

By:



H.B. No. 2489

A BILL TO BE ENTITLED

AN ACT

relating to creation of the Texas Department of Professional Licensing and the transfer of the regulation of certain professions to that department.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Occupations Code, is amended by adding Chapter 58 to read as follows:

CHAPTER 58. TEXAS DEPARTMENT OF PROFESSIONAL LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Professional Licensing.

(2) "Department" means the Texas Department of Professional Licensing.

(3) "Executive director" means the executive director of the department.

(4) "License" means a license, certificate, registration, title, or permit issued by the department.

(5) "License holder" means a person who holds a license issued by the department.

(6) "Respondent" means a person, regardless of whether the person is a license holder, who is charged with violating a law establishing a regulatory program administered by the department or a rule adopted or order issued by the commission or executive

1 director.

2 (7) "Sanction" means an action by the executive
3 director against a license holder or another person, including the
4 denial, suspension, or revocation of a license, the reprimand of a
5 license holder, or the placement of a license holder on probation.

6 Sec. 58.002. APPLICATION OF SUNSET ACT. The Texas
7 Commission on Professional Licensing and the Texas Department of
8 Professional Licensing are subject to Chapter 325, Government Code
9 (Texas Sunset Act). Unless continued in existence as provided by
10 that chapter, the commission and the department are abolished
11 September 1, 2015.

12 [Sections 58.003–58.050 reserved for expansion]

13 SUBCHAPTER B. DEPARTMENT AND COMMISSION

14 Sec. 58.051. TEXAS DEPARTMENT OF PROFESSIONAL LICENSING.
15 (a) The department is the primary state agency responsible for the
16 oversight of the following businesses and occupations that are
17 regulated by the state and assigned to the department by the
18 legislature:

- 19 (1) accountants under Chapter 901;
20 (2) engineers under Chapter 1001;
21 (3) architects under Chapter 1051;
22 (4) landscape architects under Chapter 1052;
23 (5) interior designers under Chapter 1053; and
24 (6) land surveyors under Chapter 1071.

25 (b) The department is governed by the commission.

26 Sec. 58.052. APPOINTMENT OF COMMISSION. (a) The
27 commission consists of five members appointed by the governor with

1 the advice and consent of the senate.

2 (b) Appointments to the commission shall be made without
3 regard to the race, color, disability, sex, religion, age, or
4 national origin of the appointee.

5 Sec. 58.053. COMMISSION MEMBERSHIP; ELIGIBILITY. (a) Each
6 member of the commission must be a representative of the general
7 public.

8 (b) A person is not eligible for appointment as a member of
9 the commission if the person or the person's spouse:

10 (1) is regulated by the department;

11 (2) is employed by or participates in the management
12 of a business entity or other organization regulated by or
13 receiving funds from the department;

14 (3) owns or controls, directly or indirectly, more
15 than a 10 percent interest in a business entity or other
16 organization regulated by or receiving funds from the department;

17 (4) uses or receives a substantial amount of tangible
18 goods, services, or funds from the department, other than
19 compensation or reimbursement authorized by law for commission
20 membership, attendance, or expenses;

21 (5) is an employee of the department; or

22 (6) is required to register as a lobbyist under
23 Chapter 305, Government Code, because of the person's activities
24 for compensation on behalf of a profession related to the operation
25 of the commission or department.

26 Sec. 58.054. CONFLICT OF INTEREST. (a) In this section,
27 "Texas trade association" means a cooperative and voluntarily

1 joined statewide association of business or professional
2 competitors in this state designed to assist its members and its
3 industry or profession in dealing with mutual business or
4 professional problems and in promoting their common interest.

5 (b) A person may not be a member of the commission and may
6 not be a department employee employed in a "bona fide executive,
7 administrative, or professional capacity," as that phrase is used
8 for purposes of establishing an exemption to the overtime
9 provisions of the federal Fair Labor Standards Act of 1938 (29
10 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

11 (1) the person is an officer, employee, or paid
12 consultant of a Texas trade association in a field regulated by the
13 department; or

14 (2) the person's spouse is an officer, manager, or paid
15 consultant of a Texas trade association in a field regulated by the
16 department.

17 (c) A person may not act as the general counsel to the
18 commission or the department if the person is required to register
19 as a lobbyist under Chapter 305, Government Code, because of the
20 person's activities for compensation on behalf of a profession
21 related to the operation of the department.

22 Sec. 58.055. TRAINING. (a) A person who is appointed to
23 and qualifies for office as a member of the commission may not vote,
24 deliberate, or be counted as a member in attendance at a meeting of
25 the commission until the person completes a training program that
26 complies with this section.

27 (b) The training program must provide the person with

1 information regarding:

2 (1) the legislation that created the department and
3 the commission;

4 (2) the programs operated by the department;

5 (3) the role and functions of the department;

6 (4) the rules of the department, with an emphasis on
7 the rules relating to disciplinary and investigatory authority;

8 (5) the current budget for the department;

9 (6) the results of the most recent formal audit of the
10 department;

11 (7) the requirements of:

12 (A) the open meetings law, Chapter 551,
13 Government Code;

14 (B) the public information law, Chapter 552,
15 Government Code;

16 (C) the administrative procedure law, Chapter
17 2001, Government Code; and

18 (D) other laws relating to public officials,
19 including conflict-of-interest laws; and

20 (8) any applicable ethics policies adopted by the
21 department or the Texas Ethics Commission.

22 (c) A person appointed to the commission is entitled to
23 reimbursement, as provided by the General Appropriations Act, for
24 the travel expenses incurred in attending the training program
25 regardless of whether the attendance at the program occurs before
26 or after the person qualifies for office.

27 Sec. 58.056. TERMS; VACANCY. (a) Members of the commission

1 serve staggered six-year terms. The terms of one or two members
2 expire on February 1 of each odd-numbered year.

3 (b) If a vacancy occurs during a member's term, the governor
4 shall appoint a replacement to fill the unexpired term.

5 Sec. 58.057. PRESIDING OFFICER. The governor shall
6 designate a member of the commission as the presiding officer of the
7 commission to serve in that capacity at the pleasure of the
8 governor.

9 Sec. 58.058. GROUNDS FOR REMOVAL. (a) It is a ground for
10 removal from the commission that a member:

11 (1) does not have at the time of taking office the
12 qualifications required by Section 58.053;

13 (2) does not maintain during service on the commission
14 the qualifications required by Section 58.053;

15 (3) is ineligible for membership under Section 58.054;

16 (4) cannot, because of illness or disability,
17 discharge the member's duties for a substantial part of the member's
18 term; or

19 (5) is absent from more than half of the regularly
20 scheduled commission meetings that the member is eligible to attend
21 during a calendar year without an excuse approved by a majority vote
22 of the commission.

23 (b) The validity of an action of the commission is not
24 affected by the fact that it is taken when a ground for removal of a
25 commission member exists.

26 (c) If the executive director has knowledge that a potential
27 ground for removal exists, the executive director shall notify the

1 presiding officer of the commission of the potential ground. The
2 presiding officer shall then notify the governor and the attorney
3 general that a potential ground for removal exists. If the
4 potential ground for removal involves the presiding officer, the
5 executive director shall notify the next highest ranking officer of
6 the commission, who shall then notify the governor and the attorney
7 general that a potential ground for removal exists.

8 Sec. 58.059. COMPENSATION; REIMBURSEMENT. (a) A
9 commission member may not receive compensation for service on the
10 commission.

11 (b) A commission member is entitled to reimbursement for
12 actual and necessary expenses incurred in performing functions as a
13 commission member, subject to any applicable limitation on
14 reimbursement provided by the General Appropriations Act.

15 Sec. 58.060. MEETINGS. (a) The commission shall meet at
16 least once in each quarter of the fiscal year.

17 (b) The commission may meet at other times at the call of the
18 presiding officer or as provided by commission rules.

19 Sec. 58.061. CIVIL LIABILITY. A member of the commission is
20 not liable in a civil action for an act performed in good faith
21 while performing duties as a commission member.

22 [Sections 58.062-58.100 reserved for expansion]

23 SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER DEPARTMENT PERSONNEL

24 Sec. 58.101. EXECUTIVE DIRECTOR. The commission shall
25 appoint the executive director of the department. The executive
26 director serves at the will of the commission.

27 Sec. 58.102. EXECUTIVE DIRECTOR POWERS AND DUTIES. (a) The

1 executive director shall:

2 (1) perform any duties assigned by the commission and
3 other duties specified by law;

4 (2) administer and enforce the department's programs;
5 and

6 (3) issue licenses authorized by the laws establishing
7 programs regulated by the department.

8 (b) The executive director may delegate any power or duty
9 assigned to the executive director unless prohibited by statute or
10 rule.

11 (c) The executive director may:

12 (1) impose sanctions and issue orders relating to a
13 sanction as provided by Section 58.403; and

14 (2) assess an administrative penalty or issue an order
15 relating to an administrative penalty as authorized by a law
16 establishing a program regulated by the department or as provided
17 by Sections 58.351 and 58.352.

18 Sec. 58.103. PERSONNEL. The executive director may employ
19 persons to perform the department's work and may prescribe their
20 duties and compensation, subject to the personnel policies adopted
21 by the commission and the commission's approval of the budget.

22 Sec. 58.104. DIVISION OF RESPONSIBILITIES. The commission
23 shall develop and implement policies that clearly separate the
24 policy-making responsibilities of the commission and the
25 management responsibilities of the executive director and the staff
26 of the department.

27 Sec. 58.105. INFORMATION ON STANDARDS OF CONDUCT. The

1 executive director or the executive director's designee shall
2 provide to members of the commission and to department employees,
3 as often as necessary, information regarding the requirements for
4 office or employment under this chapter, including information
5 regarding a person's responsibilities under applicable laws
6 relating to standards of conduct for state officers or employees.

7 Sec. 58.106. CAREER LADDER PROGRAM; PERFORMANCE
8 EVALUATIONS. (a) The executive director shall develop a career
9 ladder program. The program must require intra-agency postings of
10 all nonentry level positions concurrently with any public posting.

11 (b) The executive director shall develop a system of
12 employee performance evaluations. The system must require that
13 evaluations be conducted at least annually. All merit pay for
14 department employees must be based on the system established under
15 this subsection.

16 Sec. 58.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The
17 executive director or the executive director's designee shall
18 prepare and maintain a written policy statement that implements a
19 program of equal employment opportunity to ensure that all
20 personnel decisions are made without regard to race, color,
21 disability, sex, religion, age, or national origin.

22 (b) The policy statement must include:

23 (1) personnel policies, including policies relating
24 to recruitment, evaluation, selection, training, and promotion of
25 personnel, that show the intent of the department to avoid the
26 unlawful employment practices described by Chapter 21, Labor Code;
27 and

1 (2) an analysis of the extent to which the composition
2 of the department's personnel is in accordance with state and
3 federal law and a description of reasonable methods to achieve
4 compliance with state and federal law.

5 (c) The policy statement must:

6 (1) be updated annually;

7 (2) be reviewed by the state Commission on Human
8 Rights for compliance with Subsection (b)(1); and

9 (3) be filed with the governor's office.

10 Sec. 58.108. STATE EMPLOYEE INCENTIVE PROGRAM. The
11 executive director or the executive director's designee shall
12 provide to department employees information and training on the
13 benefits and methods of participation in the state employee
14 incentive program.

15 [Sections 58.109–58.200 reserved for expansion]

16 SUBCHAPTER D. POWERS AND DUTIES

17 Sec. 58.201. GENERAL POWERS AND DUTIES OF COMMISSION. (a)
18 The commission shall:

19 (1) supervise the executive director's administration
20 of the department;

21 (2) formulate the policy objectives for the
22 department; and

23 (3) approve the department's operating budget and the
24 department's requests for legislative appropriations.

25 (b) The commission:

26 (1) may adopt rules as necessary for its own
27 procedures; and

1 (2) shall adopt rules as necessary to implement this
2 chapter.

3 Sec. 58.202. FEES. (a) The commission shall set fees, in
4 amounts reasonable and necessary to cover the costs of
5 administering the programs or activities, for:

- 6 (1) licenses issued by the department;
7 (2) license renewals and late renewals;
8 (3) examinations; and
9 (4) any other program or activity administered by the
10 department for which a fee is authorized.

11 (b) The executive director by rule may provide for prorating
12 fees for the issuance of a license to allow a person regulated by
13 the department to pay only that portion of the applicable fee
14 allocable to the number of months during which the license is valid.

15 (c) The executive director shall develop cost management
16 procedures that enable the commission to determine with reasonable
17 accuracy the cost to the department of each program and activity for
18 which a fee is charged.

19 Sec. 58.203. RULES ADOPTED BY EXECUTIVE DIRECTOR. The
20 executive director shall adopt rules as necessary to implement each
21 law establishing a program regulated by the department.

22 Sec. 58.204. RULES RESTRICTING ADVERTISING OR COMPETITIVE
23 BIDDING. (a) The executive director may not adopt rules
24 restricting advertising or competitive bidding by a license holder
25 except to prohibit false, misleading, or deceptive practices.

26 (b) The executive director may not include in rules to
27 prohibit false, misleading, or deceptive practices by a license

1 holder a rule that:

2 (1) restricts the use of any advertising medium;

3 (2) restricts the license holder's personal appearance
4 or the use of the license holder's voice in an advertisement;

5 (3) relates to the size or duration of an
6 advertisement; or

7 (4) restricts the use of a trade name in advertising.

8 Sec. 58.205. USE OF TECHNOLOGY. The commission shall
9 develop and implement a policy requiring the executive director and
10 department employees to research and propose appropriate
11 technological solutions to improve the department's ability to
12 perform its functions. The technological solutions must:

13 (1) ensure that the public is able to easily find
14 information about the department on the Internet;

15 (2) ensure that persons who want to use the
16 department's services are able to:

17 (A) interact with the department through the
18 Internet; and

19 (B) access any service that can be provided
20 effectively through the Internet; and

21 (3) be cost-effective and developed through the
22 department's planning processes.

23 Sec. 58.206. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
24 RESOLUTION PROCEDURES. (a) The commission shall develop and
25 implement a policy to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter
27 2008, Government Code, for the adoption of department rules; and

1 (2) appropriate alternative dispute resolution
2 procedures under Chapter 2009, Government Code, to assist in the
3 resolution of internal and external disputes under the department's
4 jurisdiction.

5 (b) The department's procedures relating to alternative
6 dispute resolution must conform, to the extent possible, to any
7 model guidelines issued by the State Office of Administrative
8 Hearings for the use of alternative dispute resolution by state
9 agencies.

10 (c) The commission shall designate a trained person to:

11 (1) coordinate the implementation of the policy
12 adopted under Subsection (a);

13 (2) serve as a resource for any training needed to
14 implement the procedures for negotiated rulemaking or alternative
15 dispute resolution; and

16 (3) collect data concerning the effectiveness of
17 those procedures, as implemented by the department.

18 [Sections 58.207-58.250 reserved for expansion]

19 SUBCHAPTER E. PUBLIC INTEREST INFORMATION

20 AND COMPLAINT PROCEDURES

21 Sec. 58.251. PUBLIC INTEREST INFORMATION. (a) The
22 department shall prepare information of public interest describing
23 the functions of the commission and department and the procedures
24 by which complaints are filed with and resolved by the commission or
25 executive director. The department shall provide to the person
26 filing the complaint and to each person who is a subject of the
27 complaint a copy of the department's policies and procedures

1 relating to complaint investigation and resolution.

2 (b) The department shall maintain a file on each written
3 complaint filed with the department. The file must include:

4 (1) the name of the person who filed the complaint;

5 (2) the date the complaint is received by the
6 department;

7 (3) the subject matter of the complaint;

8 (4) the name of each person contacted in relation to
9 the complaint;

10 (5) a summary of the results of the review or
11 investigation of the complaint; and

12 (6) an explanation of the reason the file was closed,
13 if the department closed the file without taking action other than
14 to investigate the complaint.

15 (c) The department, at least quarterly and until final
16 disposition of the complaint, shall notify the person filing the
17 complaint and each person who is a subject of the complaint of the
18 status of the investigation unless the notice would jeopardize an
19 undercover investigation.

20 (d) The commission shall adopt a procedure for documenting
21 complaints to the department from the time of the submission of the
22 initial complaint to the final disposition of the complaint. The
23 commission shall publish the procedure in the Texas Register.

24 Sec. 58.252. PUBLIC PARTICIPATION. (a) The commission
25 shall develop and implement policies that provide the public with a
26 reasonable opportunity to appear before the commission and to speak
27 on any issue under the commission's jurisdiction.

1 (b) The commission shall prepare and maintain a written plan
2 that describes how a person who does not speak English or who has a
3 physical, mental, or developmental disability may be provided
4 reasonable access to the commission's programs.

5 [Sections 58.253-58.300 reserved for expansion]

6 SUBCHAPTER F. LICENSE REQUIREMENTS

7 Sec. 58.301. LICENSE EXPIRATION AND RENEWAL. (a) A person
8 who is otherwise eligible to renew a license may renew an unexpired
9 license by paying the required renewal fee to the department before
10 the expiration date of the license. A person whose license has
11 expired may not engage in activities that require a license until
12 the license has been renewed.

13 (b) A person whose license has been expired for 90 days or
14 less may renew the license by paying to the department a renewal fee
15 equal to 1-1/2 times the normally required renewal fee.

16 (c) A person whose license has been expired for more than 90
17 days but less than one year may renew the license by paying to the
18 department a renewal fee equal to two times the normally required
19 renewal fee.

20 (d) A person whose license has been expired for one year or
21 more may not renew the license. The person may obtain a new license
22 by complying with the requirements and procedures, including the
23 examination requirements, for obtaining an original license.

24 (e) A person who was licensed in this state, moved to
25 another state, and is currently licensed and has been in practice in
26 the other state for the two years preceding the date of application
27 may obtain a new license without reexamination. The person must pay

1 to the department a fee equal to two times the normally required
2 renewal fee for the license.

3 (f) Not later than the 30th day before the date a person's
4 license is scheduled to expire, the department shall send written
5 notice of the impending expiration to the person at the person's
6 last known address according to the records of the department.

7 Sec. 58.302. EXAMINATIONS. (a) Not later than the 30th day
8 after the date a person takes a license examination, the department
9 shall notify the person of the results of the examination.

10 (b) If the examination is graded or reviewed by a testing
11 service:

12 (1) the department shall notify the person of the
13 results of the examination not later than the 14th day after the
14 date the department receives the results from the testing service;
15 and

16 (2) if notice of the examination results will be
17 delayed for longer than 90 days after the examination date, the
18 department shall notify the person of the reason for the delay
19 before the 90th day.

20 (c) The department may require a testing service to notify a
21 person of the results of the person's examination.

22 (d) If requested in writing by a person who fails a license
23 examination, the department shall furnish the person with an
24 analysis of the person's performance on the examination.

25 Sec. 58.303. EXAMINATION FEE REFUND. (a) The department
26 may refund a license examination fee to a person who is unable to
27 take the examination if the person:

1 (1) provides reasonable advance notice to the
2 department; or

3 (2) cannot take the examination because of an
4 emergency.

5 (b) The commission by rule shall define what constitutes
6 reasonable notice and an emergency under this section.

7 Sec. 58.304. ENDORSEMENT; RECIPROCITY. (a) The commission
8 may waive any prerequisite to obtaining a license for an applicant
9 after reviewing the applicant's credentials and determining the
10 applicant holds a license issued by another jurisdiction that has
11 licensing requirements substantially equivalent to those of this
12 state.

13 (b) The commission may waive any prerequisite to obtaining a
14 license for an applicant who holds a license issued by another
15 jurisdiction with which this state has a reciprocity agreement.
16 The commission may make an agreement, subject to the approval of the
17 governor, with another state to allow for licensing by reciprocity.

18 Sec. 58.305. CONTINUING EDUCATION. The commission shall
19 recognize, prepare, or administer continuing education programs
20 for license holders. A license holder must participate in the
21 programs to the extent required by the commission to keep the
22 person's license.

23 Sec. 58.306. STAGGERED RENEWAL OF LICENSES. The commission
24 by rule may adopt a system under which licenses expire on various
25 dates during the year. For the year in which the license expiration
26 date is changed, the department shall prorate license fees on a
27 monthly basis so that each license holder pays only that portion of

1 the license fee allocable to the number of months during which the
2 license is valid. On renewal of the license on the new expiration
3 date, the total license renewal fee is payable.

4 [Sections 58.307-58.350 reserved for expansion]

5 SUBCHAPTER G. ADMINISTRATIVE PENALTY

6 Sec. 58.351. IMPOSITION OF PENALTY. The executive director
7 or commission may impose an administrative penalty against a person
8 who violates:

9 (1) a law establishing a regulatory program
10 administered by the department; or

11 (2) a rule adopted or order issued by the executive
12 director or commission.

13 Sec. 58.352. AMOUNT OF PENALTY. (a) If the relevant law
14 establishing a program regulated by the department does not state
15 the maximum amount of an administrative penalty under that law, the
16 amount of the penalty shall be assessed by the commission or
17 executive director in an amount not to exceed \$5,000 per day for
18 each violation. Each day a violation continues or occurs is a
19 separate violation for purposes of imposing a penalty.

20 (b) The amount of the penalty shall be based on:

21 (1) the seriousness of the violation;

22 (2) the respondent's history of previous violations;

23 (3) the amount necessary to deter a future violation;

24 (4) efforts made by the respondent to correct the
25 violation; and

26 (5) any other matter that justice may require.

27 (c) The commission shall by rule or by procedure published

1 in the Texas Register establish a written enforcement plan that
2 provides notice to license holders of the specific ranges of
3 penalties applicable to specific alleged violations and the
4 criteria by which the department determines the amount of a
5 proposed administrative penalty.

6 Sec. 58.353. IMPOSITION OF SANCTION. A proceeding under
7 this subchapter imposing an administrative penalty may be combined
8 with a proceeding to impose an administrative sanction. If a
9 sanction is imposed in a proceeding under this subchapter, the
10 requirements of this subchapter apply to the imposition of the
11 sanction.

12 Sec. 58.354. NOTICE OF VIOLATION AND PENALTY. If, after
13 investigation of a possible violation and the facts surrounding the
14 possible violation, the department determines a violation
15 occurred, the department shall issue to the respondent a notice of
16 alleged violation stating:

- 17 (1) a brief summary of the alleged violation;
18 (2) the amount of the recommended administrative
19 penalty; and
20 (3) that the respondent has the right to a hearing to
21 contest the alleged violation, the amount of the penalty, or both.

22 Sec. 58.355. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
23 Not later than the 20th day after the date the respondent receives
24 the notice, the respondent may:

- 25 (1) accept the department's determination and
26 recommended administrative penalty; or
27 (2) make a written request for a hearing on that

1 determination.

2 (b) If the respondent accepts the department's
3 determination, the executive director by order shall approve the
4 determination and require the person to pay the recommended
5 penalty.

6 Sec. 58.356. HEARING ON RECOMMENDATIONS. (a) If the
7 respondent requests a hearing, the department shall set a hearing
8 and give written notice of the hearing to the respondent.

9 (b) The executive director may employ a hearings officer to
10 conduct the hearing.

11 (c) The hearings officer shall:

12 (1) make findings of fact and conclusions of law; and

13 (2) promptly issue to the commission a proposal for
14 decision as to the occurrence of the violation and the amount of any
15 proposed administrative penalty.

16 Sec. 58.357. DECISION BY COMMISSION. (a) Based on the
17 findings of fact, conclusions of law, and proposal for decision,
18 the commission by order may determine that:

19 (1) a violation occurred and impose an administrative
20 penalty; or

21 (2) a violation did not occur.

22 (b) The department shall give notice of the order to the
23 respondent.

24 (c) The order under this section must include:

25 (1) separate statements of the findings of fact and
26 conclusions of law;

27 (2) the amount of any penalty imposed;

1 (3) a statement of the right of the respondent to
2 judicial review of the order; and

3 (4) any other information required by law.

4 Sec. 58.358. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

5 (a) Not later than the 30th day after the date the commission's
6 order becomes final, the respondent shall:

7 (1) pay the penalty; or

8 (2) file a petition for judicial review contesting the
9 order and:

10 (A) forward the penalty to the department for
11 deposit in an escrow account; or

12 (B) give the department a supersedeas bond in a
13 form approved by the executive director that:

14 (i) is for the amount of the penalty; and

15 (ii) is effective until judicial review of
16 the decision is final.

17 (b) A respondent who is financially unable to comply with
18 Subsection (a)(2) is entitled to judicial review if the respondent
19 files with the court, as part of the respondent's petition for
20 judicial review, a sworn statement that the respondent is unable to
21 meet the requirements of that subsection.

22 Sec. 58.359. COLLECTION OF PENALTY. If the person on whom
23 the administrative penalty is imposed violates Section 58.358(a),
24 the department or the attorney general may bring an action to
25 collect the penalty.

26 Sec. 58.360. REMITTANCE OF PENALTY AND INTEREST. (a) If,
27 after judicial review, the administrative penalty is reduced or not

1 imposed, the executive director shall:

2 (1) remit to the person the appropriate amount, plus
3 accrued interest, if the person paid the amount of the penalty; or

4 (2) execute a release of the bond, if the person posted
5 a supersedeas bond.

6 (b) The interest paid under Subsection (a)(1) is accrued at
7 the rate charged on loans to depository institutions by the New York
8 Federal Reserve Bank. The interest shall be paid for the period
9 beginning on the date the penalty is paid to the department and
10 ending on the date the penalty is remitted.

11 Sec. 58.361. ADMINISTRATIVE PROCEDURE. (a) The executive
12 director by rule shall prescribe procedures for the determination
13 and appeal of a decision to impose an administrative penalty.

14 (b) A proceeding under this subchapter to impose an
15 administrative penalty is considered to be a contested case under
16 Chapter 2001, Government Code.

17 [Sections 58.362-58.400 reserved for expansion]

18 SUBCHAPTER H. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

19 Sec. 58.401. INSPECTIONS AND INVESTIGATIONS. (a) The
20 department may conduct inspections or investigations as necessary
21 to enforce the laws administered by the department.

22 (b) The department, during reasonable business hours, may:

23 (1) enter the business premises of a person regulated
24 by the department or a person suspected of being in violation of or
25 threatening to violate a law establishing a regulatory program
26 administered by the department or a rule or order of the commission
27 or executive director related to a regulatory program administered

1 by the department; and

2 (2) examine and copy records pertinent to the
3 inspection or investigation.

4 Sec. 58.402. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
5 attorney general or the executive director may institute an action
6 for injunctive relief to restrain a violation by and to collect a
7 civil penalty from a person that appears to be in violation of or
8 threatening to violate a law establishing a regulatory program
9 administered by the department or a rule or order of the commission
10 or executive director related to the regulatory program.

11 (b) An action filed under this section must be filed in a
12 district court in Travis County.

13 (c) The attorney general and the department may recover
14 reasonable expenses incurred in obtaining injunctive relief under
15 this section, including court costs, reasonable attorney's fees,
16 investigative costs, witness fees, and deposition expenses.

17 Sec. 58.403. ADMINISTRATIVE SANCTIONS. (a) The commission
18 shall revoke, suspend, or refuse to renew a license or shall
19 reprimand a license holder for a violation of this chapter, a law
20 establishing a regulatory program administered by the department,
21 or a rule of the commission.

22 (b) The commission may place on probation a person whose
23 license is suspended. If a license suspension is probated, the
24 commission may require the person to:

25 (1) report regularly to the department on matters that
26 are the basis of the probation;

27 (2) limit practice to the areas prescribed by the

1 commission; or

2 (3) continue or renew professional education until the
3 person attains a degree of skill satisfactory to the commission in
4 those areas that are the basis for the probation.

5 Sec. 58.404. RIGHT TO HEARING; ADMINISTRATIVE PROCEDURE.

6 (a) A respondent is entitled to a hearing if the executive director
7 proposes to deny, suspend, or revoke a license.

8 (b) The executive director may employ a hearings officer to
9 conduct the hearing.

10 (c) The executive director by rule shall prescribe
11 procedures for the determination and appeal of a decision to deny,
12 suspend, or revoke a license.

13 (d) A proceeding under this chapter to deny, suspend, or
14 revoke a license is considered to be a contested case under Chapter
15 2001, Government Code.

16 SECTION 2. Subchapter A, Chapter 901, Occupations Code, is
17 amended by adding Section 901.0015 to read as follows:

18 Sec. 901.0015. TRANSFER OF POWERS AND DUTIES; REFERENCES IN
19 CHAPTER. The powers and duties assigned to the Texas State Board of
20 Public Accountancy under this chapter are transferred to the Texas
21 Department of Professional Licensing. All references in this
22 chapter to the Texas State Board of Public Accountancy mean the
23 Texas Department of Professional Licensing.

24 SECTION 3. Section 901.002, Occupations Code, is amended by
25 adding Subdivisions (6-a), (7-a), (7-b), and (7-c) to read as
26 follows:

27 (6-a) "Commission" means the Texas Commission on

1 Professional Licensing.

2 (7-a) "Council" means the Public Accountancy Advisory
3 Council.

4 (7-b) "Department" means the Texas Department of
5 Professional Licensing.

6 (7-c) "Executive director" means the executive
7 director of the department.

8 SECTION 4. The heading to Subchapter B, Chapter 901,
9 Occupations Code, is amended to read as follows:

10 SUBCHAPTER B. [~~TEXAS STATE BOARD OF~~] PUBLIC ACCOUNTANCY ADVISORY
11 COUNCIL

12 SECTION 5. Sections 901.051 and 901.052, Occupations Code,
13 are amended to read as follows:

14 Sec. 901.051. [~~BOARD~~] MEMBERSHIP; APPLICATION OF OTHER LAW.

15 (a) The [~~Texas State Board of~~] Public Accountancy Advisory Council
16 consists of five [~~15~~] members appointed by the commission [~~governor~~
17 ~~with the advice and consent of the senate~~] as follows:

18 (1) three [~~10~~] certified public accountant members, at
19 least two [~~eight~~] of whom are, on the date of appointment:

20 (A) a sole practitioner; or

21 (B) an owner or employee of a certified public
22 accountancy firm; and

23 (2) two [~~five~~] public members who are not:

24 (A) licensed under this chapter; or

25 (B) financially involved in an organization
26 subject to commission [~~board~~] regulation.

27 (b) The council is subject to Chapter 2110, Government Code

1 ~~[Each member of the board must be a United States citizen].~~

2 (c) Appointments to the council ~~[board]~~ shall be made
3 without regard to the race, color, disability, sex, religion, age,
4 or national origin of the appointee.

5 Sec. 901.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is
6 not eligible for appointment as a public member of the council
7 ~~[board]~~ if the person or the person's spouse:

8 (1) is registered, certified, or licensed by an
9 occupational regulatory agency in the field of public accountancy;

10 (2) is employed by or participates in the management
11 of a business entity or other organization regulated by the
12 commission ~~[board]~~ or receiving funds from the commission ~~[board]~~;

13 (3) owns or controls, directly or indirectly, more
14 than a 10 percent interest in a business entity or other
15 organization regulated by the commission ~~[board]~~ or receiving funds
16 from the commission ~~[board]~~; or

17 (4) uses or receives a substantial amount of tangible
18 goods, services, or funds from the commission ~~[board]~~, other than
19 compensation or reimbursement authorized by law for council ~~[board]~~
20 membership, attendance, or expenses.

21 SECTION 6. Sections 901.053(b), (d), and (e), Occupations
22 Code, are amended to read as follows:

23 (b) An officer, employee, or paid consultant of a Texas
24 trade association in the field of public accountancy may not be a
25 member of the council ~~[board and may not be an employee of the board~~
26 ~~who is exempt from the state's position classification plan or is~~
27 ~~compensated at or above the amount prescribed by the General~~

1 ~~Appropriations Act for step 1, salary group A17, of the position~~
2 ~~classification salary schedule].~~

3 (d) A person may not serve as a member of the council [~~board~~]
4 or act as the general counsel to the council [~~board~~] if the person
5 is required to register as a lobbyist under Chapter 305, Government
6 Code, because of the person's activities for compensation on behalf
7 of a profession related to the operation of the council [~~board~~].

8 (e) A member [~~or employee of~~] the council [~~board~~] may not be
9 related within the second degree by consanguinity or affinity, as
10 determined under Chapter 573, Government Code, to a person who is an
11 officer, employee, or paid consultant of a trade association of
12 persons governed by this chapter.

13 SECTION 7. Section 901.054(a), Occupations Code, is amended
14 to read as follows:

15 (a) Council [~~Board~~] members serve staggered six-year terms.

16 SECTION 8. Section 901.055, Occupations Code, is amended to
17 read as follows:

18 Sec. 901.055. OFFICERS[~~, EXECUTIVE COMMITTEE~~]. (a) The
19 commission [~~governor~~] shall designate a member of the council
20 [~~board~~] as presiding officer. [~~The presiding officer serves in~~
21 ~~that capacity at the will of the governor.~~]

22 (b) The council [~~board~~] shall annually elect from its
23 members an assistant presiding officer[~~, secretary, treasurer, and~~
24 ~~other officers the board considers necessary to serve with the~~
25 ~~presiding officer on the executive committee~~].

26 SECTION 9. Section 901.057, Occupations Code, is amended to
27 read as follows:

1 Sec. 901.057. PER DIEM; REIMBURSEMENT. (a) A council
2 ~~[board]~~ member is entitled to receive:

3 (1) \$100 for each day that the member conducts council
4 ~~[board]~~ business; and

5 (2) reimbursement for actual and necessary expenses
6 incurred in performing council ~~[board]~~ functions.

7 (b) The commission ~~[board]~~ by rule may determine the
8 activities that constitute council ~~[board]~~ business.

9 SECTION 10. Subchapter B, Chapter 901, Occupations Code, is
10 amended by adding Section 901.059 to read as follows:

11 Sec. 901.059. COUNCIL DUTIES. The council shall:

12 (1) advise the executive director on rules,
13 enforcement, licensing requirements, and other technical issues
14 related to the public accountancy profession;

15 (2) recommend to the executive director standards of
16 practice, conduct, and ethics for registrants to be adopted under
17 this chapter;

18 (3) recommend to the executive director amounts for
19 the fees it may set under this chapter;

20 (4) assist and advise the executive director in
21 recognizing continuing education programs and educational courses
22 for registrants; and

23 (5) advise the executive director in establishing
24 educational requirements for initial applicants.

25 SECTION 11. Subchapter A, Chapter 1001, Occupations Code,
26 is amended by adding Section 1001.0015 to read as follows:

27 Sec. 1001.0015. TRANSFER OF POWERS AND DUTIES; REFERENCES

1 IN CHAPTER. The powers and duties assigned to the Texas Board of
2 Professional Engineers under this chapter are transferred to the
3 Texas Department of Professional Licensing. All references in this
4 chapter to the Texas Board of Professional Engineers mean the Texas
5 Department of Professional Licensing.

6 SECTION 12. Section 1001.002, Occupations Code, is amended
7 by amending Subdivision (1) and adding Subdivisions (1-a), (1-b),
8 and (3) to read as follows:

9 (1) "Commission" [~~"Board"~~] means the Texas Commission
10 on [~~Board of~~] Professional Licensing [~~Engineers~~].

11 (1-a) "Council" means the Professional Engineers
12 Advisory Council.

13 (1-b) "Department" means the Texas Department of
14 Professional Licensing.

15 (3) "Executive director" means the executive director
16 of the department.

17 SECTION 13. The heading to Subchapter C, Chapter 1001,
18 Occupations Code, is amended to read as follows:

19 SUBCHAPTER C. [~~TEXAS BOARD OF~~] PROFESSIONAL ENGINEERS ADVISORY
20 COUNCIL

21 SECTION 14. Section 1001.101, Occupations Code, is amended
22 to read as follows:

23 Sec. 1001.101. [~~BOARD~~] MEMBERSHIP; APPLICATION OF OTHER
24 LAW. (a) The [~~Texas Board of~~] Professional Engineers Advisory
25 Council consists of five [~~nine~~] members appointed by the commission
26 [~~governor with the advice and consent of the senate~~] as follows:

27 (1) three [~~six~~] engineers; and

1 (2) two [~~three~~] members who represent the public.

2 (b) Appointments to the council [~~board~~] shall be made
3 without regard to the race, creed, sex, religion, or national
4 origin of the appointee.

5 (c) The council is subject to Chapter 2110, Government Code.

6 SECTION 15. Sections 1001.102(a) and (b), Occupations Code,
7 are amended to read as follows:

8 (a) A person is not eligible for appointment as a public
9 member of the council [~~board~~] if the person or the person's spouse:

10 (1) is licensed by an occupational regulatory agency
11 in the field of engineering;

12 (2) is employed by or participates in the management
13 of an agency or business entity related to the field of engineering;
14 or

15 (3) has a financial interest other than as a consumer
16 in a business entity related to the field of engineering.

17 (b) An engineer member of the council [~~board~~] must:

18 (1) be a citizen of the United States and a resident of
19 this state for at least 10 years before the date of appointment; and

20 (2) have been engaged in the practice of engineering
21 for at least 10 years before the date of appointment.

22 SECTION 16. Sections 1001.103 and 1001.104, Occupations
23 Code, are amended to read as follows:

24 Sec. 1001.103. MEMBERSHIP [~~AND EMPLOYEE~~] RESTRICTIONS. (a)
25 A member [~~or employee~~] of the council [~~board~~] may not be:

26 (1) an officer, employee, or paid consultant of a
27 trade association in the engineering industry; or

1 (2) related within the second degree by affinity or
2 consanguinity, as determined under Chapter 573, Government Code, to
3 a person who is an officer, employee, or paid consultant of a trade
4 association in the engineering industry.

5 (b) A person may not serve as a member of the council [~~board~~]
6 or act as the general counsel to the council [~~board~~] if the person
7 is required to register as a lobbyist under Chapter 305, Government
8 Code.

9 Sec. 1001.104. TERMS; VACANCY. (a) Council [~~Board~~]
10 members serve staggered six-year terms, with the terms of one or two
11 [~~one-third of the~~] members expiring each odd-numbered year.

12 (b) If a vacancy occurs during a member's term, the
13 commission [~~governor~~] shall appoint a replacement to fill the
14 unexpired term.

15 SECTION 17. Sections 1001.107 and 1001.108, Occupations
16 Code, are amended to read as follows:

17 Sec. 1001.107. PER DIEM; REIMBURSEMENT. (a) A council
18 [~~board~~] member is entitled to receive a per diem as set by the
19 General Appropriations Act for each day that the member engages in
20 the business of the council [~~board~~].

21 (b) A council [~~board~~] member may not receive reimbursement
22 for travel expenses, including expenses for meals and lodging,
23 other than transportation expenses. A member is entitled to
24 reimbursement for transportation expenses as provided by the
25 General Appropriations Act.

26 Sec. 1001.108. OFFICERS. (a) The commission shall appoint
27 the presiding officer of the council.

1 (b) The council [~~board~~] shall elect annually from its
2 members [~~a-presiding officer,~~] an assistant presiding officer[, ~~and~~
3 ~~a secretary~~].

4 SECTION 18. Section 1001.110, Occupations Code, is amended
5 to read as follows:

6 Sec. 1001.110. MEETINGS. The council [~~board~~] shall hold at
7 least two regular meetings each year. Special meetings shall be
8 held at the time provided by the commission [~~board's bylaws~~].

9 SECTION 19. Subchapter C, Chapter 1001, Occupations Code,
10 is amended by adding Section 1001.112 to read as follows:

11 Sec. 1001.112. COUNCIL POWERS. The council shall:

12 (1) advise the executive director on rules,
13 enforcement, licensing requirements, and other technical issues
14 related to the engineering profession;

15 (2) recommend to the executive director standards of
16 practice, conduct, and ethics for license holders to be adopted
17 under this chapter;

18 (3) recommend to the executive director amounts for
19 the fees it may set under this chapter;

20 (4) assist and advise the executive director in
21 recognizing continuing education programs and educational courses
22 for license holders; and

23 (5) advise the executive director in establishing
24 educational requirements for initial applicants.

25 SECTION 20. Section 1051.001, Occupations Code, is amended
26 by amending Subdivision (2) and adding Subdivisions (2-a), (2-b),
27 and (2-c) to read as follows:

1 (2) "Commission" [~~"Board"~~] means the Texas Commission
2 on Professional Licensing [~~Board of Architectural Examiners~~].

3 (2-a) "Council" means the Architects Advisory
4 Council.

5 (2-b) "Department" means the Texas Department of
6 Professional Licensing.

7 (2-c) "Executive director" means the executive
8 director of the department.

9 SECTION 21. Subchapter A, Chapter 1051, Occupations Code,
10 is amended by adding Section 1051.0015 to read as follows:

11 Sec. 1051.0015. TRANSFER OF POWERS AND DUTIES; REFERENCES
12 IN CHAPTER. The powers and duties assigned to the Texas Board of
13 Architectural Examiners under this chapter are transferred to the
14 Texas Department of Professional Licensing. All references in this
15 chapter to the Texas Board of Architectural Examiners mean the
16 Texas Department of Professional Licensing.

17 SECTION 22. The heading to Subchapter C, Chapter 1051,
18 Occupations Code, is amended to read as follows:

19 SUBCHAPTER C. ARCHITECTS ADVISORY COUNCIL [~~TEXAS BOARD OF~~
20 ~~ARCHITECTURAL EXAMINERS~~]

21 SECTION 23. Section 1051.101, Occupations Code, is amended
22 to read as follows:

23 Sec. 1051.101. [~~BOARD~~] MEMBERSHIP. (a) The Architects
24 Advisory Council [~~Texas Board of Architectural Examiners~~] consists
25 of five [~~nine~~] members appointed by the commission [~~governor with~~
26 ~~the advice and consent of the senate~~] as follows:

27 (1) three [~~four~~] architect members; and

1 (2) two [~~one interior designer member registered under~~
2 ~~Chapter 1053,~~

3 ~~[(3) one landscape architect member registered under~~
4 ~~Chapter 1052, and~~

5 ~~[(4) three]~~ members who represent the public, at least
6 one of whom is a person with a physical disability.

7 (b) Not more than one council [~~board~~] member may be:

8 (1) a stockholder or owner of an interest in a school
9 or college that teaches architecture, interior design, or landscape
10 architecture; or

11 (2) an officer or a member of the faculty or the
12 governing board of a school or college that teaches architecture,
13 interior design, or landscape architecture.

14 (c) Except as provided by Subsection (a)(2) [~~(a)(4)~~],
15 appointments to the council [~~board~~] shall be made without regard to
16 the race, color, disability, sex, religion, age, or national origin
17 of the appointee.

18 SECTION 24. Section 1051.102, Occupations Code, is amended
19 to read as follows:

20 Sec. 1051.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is
21 not eligible for appointment as a public member of the council
22 [~~board~~] if the person or the person's spouse:

23 (1) is registered, certified, or licensed by an
24 occupational regulatory agency in the field of architecture,
25 interior design, or landscape architecture;

26 (2) is employed by or participates in the management
27 of a business entity or other organization regulated by the

1 commission [~~board~~] or receiving funds from the commission [~~board~~];

2 (3) owns or controls, directly or indirectly, more
3 than a 10 percent interest in a business entity or other
4 organization regulated by the commission [~~board~~] or receiving funds
5 from the commission [~~board~~]; or

6 (4) uses or receives a substantial amount of tangible
7 goods, services, or funds from the commission [~~board~~], other than
8 compensation or reimbursement authorized by law for commission
9 [~~board~~] membership, attendance, or expenses.

10 SECTION 25. The heading to Section 1051.103, Occupations
11 Code, is amended to read as follows:

12 Sec. 1051.103. MEMBERSHIP [~~AND EMPLOYEE~~] RESTRICTIONS.

13 SECTION 26. Sections 1051.103(b), (c), and (d), Occupations
14 Code, are amended to read as follows:

15 (b) An officer, employee, or paid consultant of a Texas
16 trade association in the field of architecture, interior design, or
17 landscape architecture may not be a member of the council [~~board and~~
18 ~~may not be an employee of the board who is exempt from the state's~~
19 ~~position classification plan or is compensated at or above the~~
20 ~~amount prescribed by the General Appropriations Act for salary~~
21 ~~group B9 of the position classification salary schedule)].~~

22 (c) A person who is the spouse of an officer, manager, or
23 paid consultant of a Texas trade association in the field of
24 architecture, interior design, or landscape architecture may not be
25 a member of the council [~~board and may not be an employee of the~~
26 ~~board who is exempt from the state's position classification plan~~
27 ~~or is compensated at or above the amount prescribed by the General~~

1 ~~Appropriations Act for salary group B9 of the position~~
2 ~~classification salary schedule].~~

3 (d) A person may not serve as a council [~~board~~] member or act
4 as the general counsel to the council [~~board~~] if the person is
5 required to register as a lobbyist under Chapter 305, Government
6 Code, because of the person's activities for compensation on behalf
7 of a profession related to the council's [~~board's~~] operation.

8 SECTION 27. Sections 1051.104 and 1051.106, Occupations
9 Code, are amended to read as follows:

10 Sec. 1051.104. TERMS; VACANCY. (a) Council [~~Board~~]
11 members serve staggered six-year terms. The terms of one or two
12 [~~three~~] members expire on January 31 of each odd-numbered year.

13 (b) If a vacancy occurs during a member's term, the
14 commission [~~governor~~] shall appoint a replacement to fill the
15 unexpired term.

16 Sec. 1051.106. PER DIEM; REIMBURSEMENT. (a) A council
17 [~~board~~] member is entitled to receive a per diem for each day that
18 the member engages in council [~~board~~] business.

19 (b) A council [~~board~~] member is entitled to receive
20 reimbursement for travel expenses, including food, lodging, and
21 transportation expenses.

22 SECTION 28. Sections 1051.107(a) and (b), Occupations Code,
23 are amended to read as follows:

24 (a) The commission [~~governor~~] shall designate one council
25 [~~board~~] member as presiding officer [~~to serve in that capacity at~~
26 ~~the pleasure of the governor~~].

27 (b) Each January, the council [~~board~~] shall elect from its

1 members an assistant presiding officer.

2 SECTION 29. Section 1051.108, Occupations Code, is amended
3 to read as follows:

4 Sec. 1051.108. MEETINGS. (a) The council [~~board~~] shall
5 hold at least two regular meetings each year at a time and place
6 determined by the council [~~board to~~]

7 [~~(1) transact its business, and~~

8 [~~(2) examine each applicant for registration under~~
9 ~~this chapter~~].

10 (b) Special meetings of the council [~~board~~] must be called
11 by the presiding officer or, if the presiding officer is absent from
12 the state or is unable to act, by the assistant presiding officer.

13 SECTION 30. Section 1051.110, Occupations Code, is amended
14 to read as follows:

15 Sec. 1051.110. COUNCIL [~~BOARD~~] MEMBER ACTIVITIES.
16 Membership on the council [~~board~~] does not prohibit a member from
17 performing any work or providing any service on a state, county,
18 municipal, or other public building or work for a fee or other
19 direct compensation.

20 SECTION 31. Subchapter C, Chapter 1051, Occupations Code,
21 is amended by adding Section 1051.112 to read as follows:

22 Sec. 1051.112. COUNCIL DUTIES. The council shall:

23 (1) advise the executive director on rules,
24 enforcement, licensing requirements, and other technical issues
25 related to the architecture profession;

26 (2) recommend to the executive director standards of
27 practice, conduct, and ethics for registrants to be adopted under

1 this chapter;

2 (3) recommend to the executive director amounts for
3 the fees it may set under this chapter;

4 (4) assist and advise the executive director in
5 recognizing continuing education programs and educational courses
6 for registrants; and

7 (5) advise the executive director in establishing
8 educational requirements for initial applicants.

9 SECTION 32. Section 1052.001, Occupations Code, is amended
10 by amending Subdivision (1) and adding Subdivisions (1-a), (1-b),
11 and (1-c) to read as follows:

12 (1) "Commission" ["Board"] means the Texas Commission
13 on Professional Licensing [Board of Architectural Examiners].

14 (1-a) "Council" means the Landscape Architects
15 Advisory Council.

16 (1-b) "Department" means the Texas Department of
17 Professional Licensing.

18 (1-c) "Executive director" means the executive
19 director of the Texas Department of Professional Licensing.

20 SECTION 33. Subchapter A, Chapter 1052, Occupations Code,
21 is amended by adding Section 1052.0015 to read as follows:

22 Sec. 1052.0015. TRANSFER OF POWERS AND DUTIES; REFERENCES
23 IN CHAPTER. The powers and duties assigned to the Texas Board of
24 Architectural Examiners under this chapter are transferred to the
25 Texas Department of Professional Licensing. All references in this
26 chapter to the Texas Board of Architectural Examiners mean the
27 Texas Department of Professional Licensing.

1 SECTION 34. Subchapter A, Chapter 1052, Occupations Code,
2 is amended by adding Sections 1052.004 and 1052.005 to read as
3 follows:

4 Sec. 1052.004. ADVISORY COUNCIL. (a) The Landscape
5 Architects Advisory Council consists of five members appointed by
6 the commission as follows:

7 (1) three landscape architects; and

8 (2) two members who represent the public.

9 (b) Appointments to the council shall be made without regard
10 to the race, creed, sex, religion, or national origin of the
11 appointee.

12 (c) A council member serves the term established by the
13 commission.

14 (d) The council is subject to Chapter 2110, Government Code.

15 Sec. 1052.005. COUNCIL DUTIES. The council shall:

16 (1) advise the executive director on rules,
17 enforcement, licensing requirements, and other technical issues
18 related to the landscape architecture profession;

19 (2) recommend to the executive director standards of
20 practice, conduct, and ethics for registrants to be adopted under
21 this chapter;

22 (3) recommend to the executive director amounts for
23 the fees it may set under this chapter;

24 (4) assist and advise the executive director in
25 recognizing continuing education programs and educational courses
26 for registrants; and

27 (5) advise the executive director in establishing

1 educational requirements for initial applicants.

2 SECTION 35. Section 1053.001, Occupations Code, is amended
3 by amending Subdivision (1) and adding Subdivisions (1-a), (1-b),
4 and (1-c) to read as follows:

5 (1) "Commission" [~~"Board"~~] means the Texas Commission
6 on Professional Licensing [~~Board of Architectural Examiners~~].

7 (1-a) "Council" means the Interior Designers Advisory
8 Council.

9 (1-b) "Department" means the Texas Department of
10 Professional Licensing.

11 (1-c) "Executive director" means the executive
12 director of the Texas Department of Professional Licensing.

13 SECTION 36. Subchapter A, Chapter 1053, Occupations Code,
14 is amended by adding Section 1053.0015 to read as follows:

15 Sec. 1053.0015. TRANSFER OF POWERS AND DUTIES; REFERENCES
16 IN CHAPTER. The powers and duties assigned to the Texas Board of
17 Architectural Examiners under this chapter are transferred to the
18 Texas Department of Professional Licensing. All references in this
19 chapter to the Texas Board of Architectural Examiners mean the
20 Texas Department of Professional Licensing.

21 SECTION 37. Subchapter A, Chapter 1053, Occupations Code,
22 is amended by adding Sections 1053.004 and 1053.005 to read as
23 follows:

24 Sec. 1053.004. ADVISORY COUNCIL. (a) The Interior Designers
25 Advisory Council consists of five members appointed by the
26 commission as follows:

27 (1) three interior designers; and

1 (2) two members who represent the public.

2 (b) Appointments to the council shall be made without regard
3 to the race, creed, sex, religion, or national origin of the
4 appointee.

5 (c) A council member serves the term established by the
6 commission.

7 (d) The council is subject to Chapter 2110, Government Code.
8 Sec. 1053.005. COUNCIL DUTIES. The council shall:

9 (1) advise the executive director on rules,
10 enforcement, licensing requirements, and other technical issues
11 related to the interior design profession;

12 (2) recommend to the executive director standards of
13 practice, conduct, and ethics for registrants to be adopted under
14 this chapter;

15 (3) recommend to the executive director amounts for
16 the fees it may set under this chapter;

17 (4) assist and advise the executive director in
18 recognizing continuing education programs and educational courses
19 for registrants; and

20 (5) advise the executive director in establishing
21 educational requirements for initial applicants.

22 SECTION 38. The heading to Subchapter B, Chapter 1053,
23 Occupations Code, is amended to read as follows:

24 SUBCHAPTER B. COUNCIL [~~BOARD POWERS AND~~] DUTIES

25 SECTION 39. Subchapter A, Chapter 1071, Occupations Code,
26 is amended by adding Section 1071.0015 to read as follows:

27 Sec. 1071.0015. TRANSFER OF POWERS AND DUTIES; REFERENCES

1 IN CHAPTER. The powers and duties assigned to the Texas Board of
2 Professional Land Surveying under this chapter are transferred to
3 the Texas Department of Professional Licensing. All references in
4 this chapter to the Texas Board of Professional Land Surveying mean
5 the Texas Department of Professional Licensing.

6 SECTION 40. Section 1071.002, Occupations Code, is amended
7 by amending Subdivision (1) and adding Subdivisions (2-a), (3-a),
8 and (3-b) to read as follows:

9 (1) "Commission" [~~"Board"~~] means the Texas Commission
10 on [~~Board of~~] Professional Licensing [~~Land Surveying~~].

11 (2-a) "Council" means the Professional Land Surveying
12 Advisory Council.

13 (3-a) "Department" means the Texas Department of
14 Professional Licensing.

15 (3-b) "Executive director" means the executive
16 director of the department.

17 SECTION 41. The heading to Subchapter B, Chapter 1071,
18 Occupations Code, is amended to read as follows:

19 SUBCHAPTER B. [~~TEXAS BOARD OF~~] PROFESSIONAL LAND SURVEYING
20 ADVISORY COUNCIL

21 SECTION 42. The heading to Section 1071.051, Occupations
22 Code, is amended to read as follows:

23 Sec. 1071.051. COUNCIL [~~BOARD~~] MEMBERSHIP.

24 SECTION 43. Sections 1071.051(a), (b), (e), (f), and (g),
25 Occupations Code, are amended to read as follows:

26 (a) The [~~Texas Board of~~] Professional Land Surveying
27 Advisory Council consists of five [~~10~~] members as follows:

1 (1) one [~~the commissioner,~~
2 ~~[(2) two]~~ licensed state land surveyor member
3 [~~members~~] actively engaged in the practice of state land surveying
4 for not less than the five years preceding appointment;

5 (2) two [~~(3) four~~] registered professional land
6 surveyor members actively engaged in the practice of professional
7 surveying in this state for not less than the five years preceding
8 appointment; and

9 (3) two [~~(4) three~~] members who represent the public.

10 (b) The members of the council [~~board other than the~~
11 ~~commissioner~~] are appointed by the commission [~~governor with the~~
12 ~~advice and consent of the senate. The governor shall appoint the~~
13 ~~licensed state land surveyor board members on the recommendation of~~
14 ~~the commissioner~~].

15 (e) A registered professional land surveyor council [~~board~~]
16 member may not be licensed as a licensed state land surveyor.

17 (f) For purposes of the experience required for appointment
18 as a registered professional land surveyor council [~~board~~] member,
19 the teaching of surveying in a recognized school of engineering or
20 surveying may be regarded as the practice of professional land
21 surveying.

22 (g) Appointments to the council [~~board~~] shall be made
23 without regard to the race, creed, sex, religion, or national
24 origin of the appointee.

25 SECTION 44. Section 1071.052, Occupations Code, is amended
26 to read as follows:

27 Sec. 1071.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is

1 not eligible for appointment as a public member of the council
2 [~~board~~] if the person or the person's spouse:

3 (1) is registered, certified, or licensed by an
4 occupational regulatory agency in the field of surveying;

5 (2) is employed by or participates in the management
6 of a business entity or other organization regulated by or
7 receiving funds from the commission [~~board~~];

8 (3) owns or controls, directly or indirectly, more
9 than a 10 percent interest in a business entity or other
10 organization regulated by or receiving funds from the commission
11 [~~board~~]; or

12 (4) uses or receives a substantial amount of tangible
13 goods, services, or funds from the commission [~~board~~], other than
14 compensation or reimbursement authorized by law for council [~~board~~]
15 membership, attendance, or expenses.

16 SECTION 45. Sections 1071.053(b), (c), and (d), Occupations
17 Code, are amended to read as follows:

18 (b) An officer, employee, or paid consultant of a Texas
19 trade association in the field of surveying may not be a council
20 [~~board~~] member [~~or an employee of the board who is exempt from the~~
21 ~~state's position classification plan or is compensated at or above~~
22 ~~the amount prescribed by the General Appropriations Act for step 1,~~
23 ~~salary group A17, of the position classification salary schedule]~~.

24 (c) A person who is the spouse of an officer, manager, or
25 paid consultant of a Texas trade association in the field of
26 surveying may not be a council [~~board~~] member [~~or an employee of the~~
27 ~~board who is exempt from the state's position classification plan~~

1 ~~or is compensated at or above the amount prescribed by the General~~
2 ~~Appropriations Act for step 1, salary group A17, of the position~~
3 ~~classification salary schedule].~~

4 (d) A person may not serve as a member of the council [~~board~~]
5 or act as the general counsel to the council [~~board~~] if the person
6 is required to register as a lobbyist under Chapter 305, Government
7 Code, because of the person's activities for compensation on behalf
8 of a profession related to the operation of the council [~~board~~].

9 SECTION 46. Sections 1071.054 and 1071.055, Occupations
10 Code, are amended to read as follows:

11 Sec. 1071.054. TERMS; [~~OATH,~~] VACANCY. (a) Members of the
12 council [~~board~~] appointed by the commission [~~governor~~] serve
13 staggered six-year terms, with the terms of one or two [~~one-third~~]
14 of those members expiring on January 31 of each odd-numbered year.

15 (b) A council [~~board~~] member appointed by the commission
16 [~~governor~~] may not serve more than two consecutive terms.

17 (c) [~~Before assuming the duties of office, each board member~~
18 ~~shall file with the secretary of state a copy of the constitutional~~
19 ~~oath of office taken by the member.~~

20 [~~(d)~~] A vacancy on the council [~~board~~] is filled by
21 appointment by the commission [~~governor in the manner provided by~~
22 ~~Section 1071.051]~~ for the unexpired term.

23 Sec. 1071.055. OFFICERS. (a) The commission [~~governor~~]
24 shall designate one council [~~board~~] member as the [~~board's~~]
25 presiding officer [~~to serve in that capacity at the pleasure of the~~
26 ~~governor~~].

27 (b) The council [~~board~~] shall elect a member as assistant

1 presiding officer at the first council [~~board~~] meeting held after
2 February 10 of each odd-numbered year.

3 SECTION 47. Section 1071.057, Occupations Code, is amended
4 to read as follows:

5 Sec. 1071.057. PER DIEM; REIMBURSEMENT. (a) Each council
6 [~~board~~] member [~~other than the commissioner~~] is entitled to receive
7 a per diem allowance as set by the legislature for each day that the
8 member engages in official council [~~board~~] duties, including time
9 spent in necessary travel.

10 (b) Each council [~~board~~] member [~~other than the~~
11 ~~commissioner~~] is entitled to reimbursement for all legitimate
12 expenses incurred in performing the member's duties.

13 SECTION 48. The following laws are repealed:

14 (1) Sections 901.001(2), 901.006, 901.053(c),
15 901.054(b), 901.056, 901.058, and 901.152, Occupations Code;

16 (2) Subchapters C and E, Chapter 901, Occupations
17 Code;

18 (3) Sections 1001.005, 1001.105, 1001.106, 1001.109,
19 1001.111, and 1001.203, Occupations Code;

20 (4) Subchapters D and F, Chapter 1001, Occupations
21 Code;

22 (5) Sections 1051.004, 1051.105, 1051.107(c)-(e),
23 1051.109, 1051.111, 1051.201, and 1051.203, Occupations Code;

24 (6) Subchapters D and F, Chapter 1051, Occupations
25 Code;

26 (7) Section 1052.053, Occupations Code;

27 (8) Subchapter C, Chapter 1052, Occupations Code;

1 (9) Section 1053.051, Occupations Code;
2 (10) Subchapter C, Chapter 1053, Occupations Code;
3 (11) Sections 1071.003, 1071.051(c) and (d),
4 1071.056, 1071.058, and 1071.157, Occupations Code; and
5 (12) Subchapters C and E, Chapter 1071, Occupations
6 Code.

7 SECTION 49. (a) As soon as possible after the effective
8 date of this section, the governor shall appoint the members of the
9 Texas Commission on Professional Licensing in accordance with
10 Chapter 58, Occupations Code, as added by this Act. In making the
11 initial appointments, the governor shall designate two members for
12 terms expiring February 1, 2005, two members for terms expiring
13 February 1, 2007, and one member for a term expiring February 1,
14 2009.

15 (b) This section takes effect September 1, 2003.

16 SECTION 50. (a) As soon as possible after the establishment
17 of the Texas Commission on Professional Licensing, the commission
18 shall appoint an executive director.

19 (b) As soon as possible after the establishment of the Texas
20 Commission on Professional Licensing, the commission shall appoint
21 the members of the following advisory councils:

22 (1) the Public Accountancy Advisory Council created
23 under Chapter 901, Occupations Code, as amended by this Act;

24 (2) the Professional Engineers Advisory Council
25 created under Chapter 1001, Occupations Code, as amended by this
26 Act;

27 (3) the Architects Advisory Council created under

1 Chapter 1051, Occupations Code, as amended by this Act;

2 (4) the Landscape Architects Advisory Council created
3 under Chapter 1052, Occupations Code, as amended by this Act;

4 (5) the Interior Designers Advisory Council created
5 under Chapter 1053, Occupations Code, as amended by this Act; and

6 (6) the Professional Land Surveying Advisory Council
7 created under Chapter 1071, Occupations Code, as amended by this
8 Act.

9 SECTION 51. The Texas Department of Professional Licensing
10 created under this Act may, before March 1, 2005, perform only those
11 powers, duties, functions, programs, and activities that relate to
12 preparing for the transfer of powers, duties, functions, programs,
13 and activities to that agency in accordance with this Act. The
14 Texas Department of Professional Licensing created under this Act
15 may not operate all or any part of a licensing program before March
16 1, 2005.

17 SECTION 52. The Department of Information Resources shall
18 assist the Texas Department of Professional Licensing in the
19 development and integration of technology needed for the Texas
20 Commission on Professional Licensing. The Texas Department of
21 Professional Licensing shall pay for the costs of implementing the
22 technology required and reimburse the Department of Information
23 Resources for any expense incurred by the Department of Information
24 Resources. The commission shall assess a technology infrastructure
25 fee on each license issued by the commission.

26 SECTION 53. (a) The Texas Department of Professional
27 Licensing may not decrease a licensing fee or any fee assessed by

1 the department or by a state agency abolished by this Act before
2 September 1, 2006. Any revenue received by the department above the
3 amount necessary to administer the department and department
4 programs shall be deposited to the credit of the general revenue
5 fund.

6 (b) Except as provided by this subsection, the Texas
7 Commission on Professional Licensing may not modify an existing
8 rule or licensing procedure before March 1, 2007. The commission
9 may modify an existing rule or licensing procedure as necessary to
10 address unforeseen changes or emergency situations.

11 (c) The Texas Commission on Professional Licensing shall
12 develop and implement a six-month transition plan to phase in the
13 following functions in the order listed:

- 14 (1) administration;
- 15 (2) licensing;
- 16 (3) examinations; and
- 17 (4) enforcement.

18 SECTION 54. (a) On March 1, 2005, the following powers,
19 duties, functions, programs, and activities are transferred to the
20 Texas Commission on Professional Licensing:

21 (1) all powers, duties, functions, programs, and
22 activities related to administrative support services, such as
23 strategic planning and evaluation, audit, legal, human resources,
24 accounting, purchasing, financial management, and contract
25 management services, of a state agency abolished by this Act; and

26 (2) all powers, duties, functions, programs, and
27 activities related to licensing programs administered by a state

1 agency abolished by this Act:

2 (A) the Texas State Board of Public Accountancy
3 under Chapter 901, Occupations Code, as amended by this Act;

4 (B) the Texas Board of Professional Engineers
5 under Chapter 1001, Occupations Code, as amended by this Act;

6 (C) the Texas Board of Architectural Examiners
7 under Chapters 1051, 1052, and 1053, Occupations Code, as amended
8 by this Act; and

9 (D) the Texas Board of Professional Land
10 Surveying under Chapter 1071, Occupations Code, as amended by this
11 Act.

12 (b) On March 1, 2005:

13 (1) all obligations and contracts of a state agency
14 abolished by this Act that are related to a power, duty, function,
15 program, or activity transferred under Subsection (a) of this
16 section are transferred to the Texas Commission on Professional
17 Licensing;

18 (2) all property and records in the custody of a state
19 agency abolished by this Act that are related to a power, duty,
20 function, program, or activity transferred under Subsection (a) of
21 this section and all funds appropriated by the legislature for the
22 power, duty, function, program, or activity shall be transferred to
23 the Texas Commission on Professional Licensing; and

24 (3) all complaints, investigations, or contested
25 cases that are pending before a state agency abolished by this Act
26 and that are related to a power, duty, function, program, or
27 activity transferred under Subsection (a) of this section are

1 transferred without change in status to the Texas Commission on
2 Professional Licensing.

3 (c) A rule or form adopted by a state agency abolished by
4 this Act that relates to a power, duty, function, program, or
5 activity transferred under Subsection (a) of this section is a rule
6 or form of the Texas Commission on Professional Licensing and
7 remains in effect until altered by the commission.

8 (d) A reference in law to a state agency abolished by this
9 Act that relates to a power, duty, function, program, or activity
10 transferred under Subsection (a) of this section means the Texas
11 Commission on Professional Licensing.

12 (e) A license, permit, or certification in effect that was
13 issued by a state agency abolished by this Act and that relates to a
14 power, duty, function, program, or activity transferred under
15 Subsection (a) of this section is continued in effect as a license,
16 permit, or certification of the Texas Commission on Professional
17 Licensing.

18 SECTION 55. An action brought or proceeding commenced
19 before the effective date of a transfer prescribed by this Act,
20 including a contested case or a remand of an action or proceeding by
21 a reviewing court, is governed by the laws and rules applicable to
22 the action or proceeding before the transfer.

23 SECTION 56. (a) The following state agencies are
24 abolished:

- 25 (1) the Texas State Board of Public Accountancy;
26 (2) the Texas Board of Professional Engineers;
27 (3) the Texas Board of Architectural Examiners; and

1 (4) the Texas Board of Professional Land Surveying.

2 (b) The abolition of a state agency or entity listed in
3 Subsection (a) of this section and the transfer of its powers,
4 duties, functions, programs, activities, obligations, rights,
5 contracts, records, property, funds, and employees as provided by
6 this Act do not affect or impair an act done, any obligation, right,
7 order, permit, certificate, rule, criterion, standard, or
8 requirement existing, or any penalty accrued under former law, and
9 that law remains in effect for any action concerning those matters.

10 SECTION 57. Except as otherwise provided by this Act, this
11 Act takes effect March 1, 2004.

H.B. No. 2489

A BILL TO BE ENTITLED
AN ACT

By David S. ...

relating to creation of the Texas Department of Professional Licensing and the transfer of the regulation of certain professions to that department.

MAR 12 2003

Filed with the Chief Clerk

Government Reform

MAR 18 2003

Read first time and referred to Committee on _____

Reported ___ favorably (as amended)
(as substituted)

Sent to Committee on (Calendars)
(Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Engrossed

Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

Received from the House

Read and referred to Committee on _____

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

Read third time, _____, and passed by (a viva voce vote)
(_____ yeas, _____ nays)

Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,
_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)